



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,292	07/27/2001	Terri L. Butler	374.028US1	8105

21186 7590 07/15/2003

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

FISHER, LATONIA M

ART UNIT	PAPER NUMBER
----------	--------------

1623

DATE MAILED: 07/15/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/917,292

Applicant(s)

BUTLER ET AL.

Examiner

La Tonia M. Fisher

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 1623

FINAL ACTION

Claims 1-17 are pending and an action on the merits is contained herein below.

The amendments to claims 4,5,9-11, 13-15 and 17 and the amendment to the specification have been noted and entered into the record.

Claim Rejections - 35 USC § 102

The rejection of claims 4-7 and 9 under 35 USC 102(b) has been maintained for the reasons of record and further in view of the comments contained herein below.

Applicant's arguments filed April 28, 2003 have been fully considered but they are not persuasive.

Applicants assert that Cotter et al. does not anticipate the present invention as claimed in claims 4-7 and 9. Specifically, applicant argues that the present invention is directed only to improvement of cardiac function and lacking the nutrients of Cotter et al., is not claimed to have a benefit of under nutrition.

As mentioned in the first office action, claims 4-7 and 9 are drawn to compositions comprising D-ribose and a vasodilator. Cotter et al. teach a method for providing cardiovascular therapy by administering ribose, L-arginine and L-carnitine to subject. See USPN '098, col. 12, lines 7-12 and claim 11. Additionally, Cotter et al. teach administration of eight grams per liter of ribose. The instant claims recite two to ten grams of ribose. Consequently, Cotter et al. teaches and suggests every element of claims 4-7 and 9, which encompass administering two to ten grams of ribose with a vasodilator.

Applicants also argue that nothing in Cotter et al. suggests that ribose subjects with congestive heart failure. Comprising is an open-ended term which benefit the inclusion of other components in addition to the amount of ribose to be administered.

Claim Rejections - 35 USC § 103

The rejection of claims 1-3 and 9 and 16 under 35 USC 103(a) over Cotter et al. in view of Foker has been maintained for the reasons of record and further in view of the comments contained herein below.

Applicant's arguments filed April 28, 2003 have been fully considered but they are not persuasive.

Applicants argue that the dogs used in the Foker reference were young healthy dogs that were experimentally subjected to severe ischemia. Applicants do not provide sufficient evidence to support dogs, young or old, are not correlative models for humans, young or old. Consequently, Applicants' opinions are not sufficient to overcome the rejection.

Applicants then argue that the present invention is allowable since despite the motivation of Cotter et al. and Foker, no one combined the teachings of the two patents referenced to determine the dosages Applicant has claimed. The examiner respectfully disagrees. The fact that no one has combined the teaching of the two patents to claim the dosages that the Applicant instantly claims suggests to and convinces the examiner that such was not claimed by others because such dosages and times for administration are obvious when viewed in respect to the Cotter et al. and Foker patents.

Applicants further argue that it is not obvious to take the composition of the instantly claimed invention one to four times a day. The examiner emphasizes that the skilled artisan

Art Unit: 1623

would be apprised of how to administer an effective amount of the ribose composition to a patient in need thereof. Furthermore, in regards to the applicants' arguments drawn to the inclusion of vitamins in the instantly claimed composition, Applicants' arguments are unpersuasive and do not provide sufficient evidence to obviate the prima facie case of record.

The rejection of claims 8 and 11-12 under 35 USC 103(a) over Cotter et al. in view of Foker and Wakat has been maintained for the reasons of record and further in view of the comments contained herein below.

Applicant's arguments filed April 28, 2003 have been fully considered but they are not persuasive.

Applicants argue that while hypertension is often a predisposing factor for congestive heart failure following a myocardial infarction, the subject of example 6 in the instantly application has not experienced a myocardial infarction and in fact has mild hypertension. The examiner directs the applicants' attention to the fact that the applicants' claims are not limited to mild hypertensive patients and absence of proof to the contrary, the examiner's position is sufficiently grounded in fact and maintained for the reason of record.

Accordingly, the examiner's rejection of claims 1-17 is maintained. No claims are allowed. This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

Art Unit: 1623

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1623

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

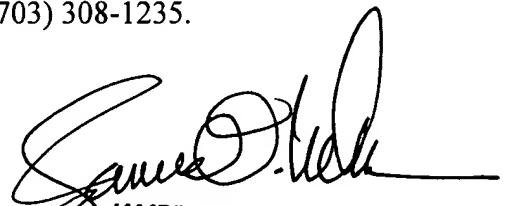
Any inquiry concerning this communication or earlier communications from the examiner should be directed to La Tonia M. Fisher whose telephone number is (703) 306-5819.

The examiner can normally be reached on Monday - Friday from 9:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on (703) 308-4624. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

LMF
July 14, 2003



JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600